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RUESDT/DTRA-OSES DARMSTADT GE IMMEDIATE  
RUENAAA/CNO WASHINGTON DC IMMEDIATE  
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DEPT FOR T, VCI AND EUR/PRA  
DOE FOR NNSA/NA-24  
CIA FOR WINPAC  
JCS FOR J5/DDGSA  
SECDEF FOR OSD(P)/STRATCAP  
NAVY FOR CNO-N5JA AND DIRSSP  
AIRFORCE FOR HQ USAF/ASX AND ASXP  
DTRA FOR OP-OS OP-OSA AND DIRECTOR  
NSC FOR LOOK  
DIA FOR LEA

E.O. 12958: DECL: 12/02/2019

TAGS: KACT MARR PARM PREL RS US START

SUBJECT: START FOLLOW-ON NEGOTIATIONS, GENEVA  
(SFO-GVA-VII): (U) LAWYERS' MEETING ON TREATY STRUCTURE  
AND PROVISIONAL APPLICATION, NOVEMBER 30, 2009

REF: STATE 115348

Classified By: A/S Rose E. Gottemoeller, United States  
START Negotiator. Reasons: 1.4(b) and (d).

¶1. (U) This is SFO-GVA-VII-048.

¶2. (U) Meeting Date: November 30, 2009  
Time: 10:30 a.m. - 11:30 p.m.  
Place: U.S. Mission, Geneva

Participants:

U.S. Russia

Mr. Highsmith Mr. Lobach  
Mr. Brown Ms. Melikbekian

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SUMMARY  
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¶3. (S) Mr. Highsmith and Mr. Brown met with Russian lawyers Mr. Lobach and Ms. Melikbekian to discuss issues related to provisional application. Lobach continued to raise concerns on any approach that would attempt to provisionally apply "interim" measures that were not intended to be ratified or to enter-into-force (EIF). This concern arose specifically with respect to the U.S.-proposed procedures for transparency visits that would apply only during the period of provisional application. The U.S. lawyers asked whether the concept would be more consistent with Russian treaty practice if such

measures were to continue to be available following (EIF) for transparency purposes. Lobach requested that this idea be put on paper for his review. End Summary.

¶4. (S) Subject Summary: Discussion of Provisional Application.

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DISCUSSION OF PROVISIONAL APPLICATION  
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¶5. (S) Highsmith and Brown discussed provisional application with Russian lawyers Lobach and Melikbekian. Highsmith commented that it might be possible to treat, under provisional application, some of the transparency measures that had been contained in the U.S.-proposed "bridging arrangement" (Reftel). Lobach responded that it would be difficult for Russia to agree to such an approach because the measures that the United States had proposed in that arrangement were not appropriate for provisional application under Russian law: they would not continue after EIF of the treaty and were more properly described as "interim" measures. He emphasized that his President would not be able to sign an instrument that contained "interim" measures that would not be ratified or survive EIF of the treaty.

¶6. (S) Lobach admitted that, hypothetically, it might be possible for Russia to adopt measures that included less than full privileges and immunities for U.S. and Russian personnel, but he noted that Russian prosecutors would not necessarily accord any special treatment to U.S. personnel if

they were to commit any criminal acts. Highsmith asked whether there was some degree of discretion on whether to prosecute. Lobach answered in the affirmative, but noted that there was some sensitivity between the branches of government on such issues, adding that there had also been some disagreements between Ministry of Foreign Affairs (MFA) and customs authorities when exemptions from customs duties were being claimed based on a provisionally-applied agreement. Highsmith asked whether Russia could provisionally apply full privileges and immunities. Lobach responded that it was possible to provisionally apply full privileges and immunities but that, in order to do so, it would have to be on the basis of reciprocity, and he understood that the United States was unable to provide full privileges and immunities.

¶7. (S) Highsmith asked Lobach whether there were any legal objections to the concept of identifying certain provisions of the treaty and the protocol for provisional application; Lobach confirmed that there were no objections as a matter of law but that he could not speak for what specific provisions would be proposed for such treatment. Highsmith asked whether such a concept could be incorporated into a treaty article; Lobach agreed that it would be possible to do so.

¶8. (S) Brown asked whether it would be possible to put the concept of transparency visits -- as was contained in the U.S.-proposed bridging arrangement -- in a treaty article, perhaps as a transparency measure. Highsmith added that perhaps such measures could be agreed on a case-by-case basis, and could be linked to a political commitment that a particular number of such transparency measures could be undertaken during a given period of time. Lobach requested that the U.S. lawyers work up an example of how these measures could be framed as a treaty provision that would continue after EIF and thus could be subject to provisional application.

¶9. (U) Documents exchanged: None.

¶10. (U) Gottemoeller sends.  
GRIFFITHS